

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-101

GOVERNMENT OF THE TERRITORY OF GUAM

v.

SEA-LAND SERVICE, INC., AMERICAN PRESIDENT LINES, LTD., AND MATSON  
NAVIGATION COMPANY, INC.

Decided: June 7, 2005

By complaint filed September 10, 1998, the Government of the Territory of Guam (GovGuam) seeks: (1) the establishment of reasonable rates, rules, classifications and practices for all transportation by water (including the water portion of intermodal transportation) provided by Sea-Land Service, Inc. (now Horizon Lines, LLC) (Horizon), American President Lines, Ltd. (APL), and Matson Navigation Company, Inc. (Matson) (collectively, defendants), in the domestic offshore trade to and from Guam; and (2) reparations and damages for all sums assessed and collected by defendants for that transportation.

In a decision served on January 6, 1999, the Board adopted a three-step process for resolving this matter. In Phase I, the Board addressed defendants' joint motion to dismiss the complaint, and in a decision served on November 15, 2001, the Board granted the defendants' motion to dismiss GovGuam's discrimination claim (but denied the remainder of the motion) and dismissed APL as a defendant. In Phase II, the Board is scheduled to address an appropriate methodology for assessing rate reasonableness. In Phase III, the Board will consider the merits of the complaint. This proceeding is currently in Phase II and all evidence in this Phase has been submitted.

On October 19, 2004, we scheduled an oral argument for November 10, 2004. At the request of GovGuam, we rescheduled that hearing for February 10, 2005. However, in a decision served on February 3, 2005, we canceled the scheduled oral argument and held the proceeding in abeyance pending communication from GovGuam.

On February 7, 2005, Horizon filed a motion requesting that the Board either proceed with the previously scheduled oral argument, or in the alternative, issue a show cause order on why the Board should not dismiss this proceeding. GovGuam responded by requesting that the Board continue to hold the oral argument in abeyance for a reasonable period of time because GovGuam was in the process of selecting additional counsel in this case.

On March 15, 2005, after efforts to reach a settlement failed, Matson also filed a motion for a show cause order. GovGuam did not respond to Matson's motion. On April 20, 2005, Board staff convened a conference with the parties to ascertain their positions and understand what is delaying this matter. No one attended who was authorized to speak for GovGuam. To date, we have not heard from GovGuam that it is ready to move forward with this proceeding generally or participate in an oral argument specifically.

Given the history of this case, the requests for a show cause order are reasonable and will be granted. GovGuam is required to show cause why the Board should not dismiss this proceeding. GovGuam has until June 28, 2005, to respond to this show cause order, and to serve a copy of its response on defendants, as well as, intervenor, the Caribbean Shippers Association (CSA).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. GovGuam is directed to show cause by June 28, 2005, why this proceeding should not be dismissed. GovGuam must serve a copy of its response to the Board on defendants and CSA. The defendants and CSA may respond by July 8, 2005.

2. This decision is effective on its service date.

3. A copy of this decision will be served on: Attorney General Douglas B. Moylan, Office of the Attorney General, 287 West O'Brien Drive, Hagatna, Guam 96910 USA.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary